

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

FOUNDRY NETWORKS, INC.,)	
a Delaware Corporation,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 06-470-SLR
)	
ALCATEL USA RESOURCES, INC.)	
a Delaware Corporation,)	(JURY TRIAL DEMANDED)
ALCATEL INTERNETWORKING, INC.,)	
a California Corporation,)	
COMPAGNIE FINANCIÈRE ALCATEL)	
a French Corporation, and)	
ALCATEL S.A.,)	
A French Corporation,)	
)	
Defendants.)	

**FOUNDRY'S RESPONSE TO
ALCATEL'S MOTION FOR EXTENSION OF TIME**

Plaintiff Foundry Networks, Inc. ("Foundry") submits this brief opposition to Defendants' Motion for Extension of Time to Serve and File Reply Briefs in Support of Motions to Dismiss (D.I. 47). An extension of more than one week, as Alcatel requests, is unjustified for two reasons. First, a longer extension is unnecessary. Thanks to the efforts of Magistrate Judge Thyng, Foundry and Alcatel have agreed in principle on the terms for settling this case and the related patent case, *Alcatel USA Resources, Inc. and Alcatel Internetworking, Inc. v. Foundry Networks, Inc.*, C.A. No. 05-418-SLR. Through diligent effort, the parties should be able to finalize the settlement by December 18. Indeed, the one-month extension requested by Alcatel would be counterproductive because it would eliminate an incentive for Alcatel to complete the settlement process promptly. Second, a long delay would be extremely prejudicial to Foundry should the

settlement process ultimately fail. Foundry has been asked to refrain from pursuing litigation activities pending the settlement discussions. Every day of delay puts Foundry in a worse litigation position given the extant deadlines in the related patent case. For these reasons, Foundry respectfully requests that Alcatel's motion be denied.

Alcatel has already received the benefit of one ten-day extension to file its reply briefs, when Foundry originally agreed to move Alcatel's deadline to December 11, 2006. Foundry offered Alcatel another week's extension after the parties reached an agreement in principle on December 1, 2006 to resolve this matter. That offer, which Alcatel has turned down, would have moved Alcatel's response time from December 11 to December 18, 2006.

Instead, Alcatel seeks an additional extension of one month (to January 11, 2007) to serve and file its reply briefs. In support, Alcatel contends that "it is not realistic to expect that all of the settlement papers will be finalized . . . by December 18." That is untrue. If Alcatel were committed to working diligently on settlement, an agreement could easily be finalized by December 18. Through the efforts of Magistrate Judge Thyne, the parties reached an agreement in principle on December 1 to resolve this action and the related patent action. Alcatel has had Foundry's proposed license agreement since October 16, and has had Foundry's proposed settlement agreement since December 4. Alcatel was supposed to provide comments on those draft settlement papers by last Thursday, December 7, but it did not do so. When Alcatel finally responds, Foundry is prepared to devote its full attention to the settlement process in order to achieve a final agreement.

Foundry stands ready to agree to a further extension beyond December 18 for Alcatel to file its reply briefs, should the parties' settlement negotiations proceed in good faith. However, because of the delay that has already occurred, coupled with Foundry's firm belief that a one-month extension will not provide either party with the requisite incentive to resolve their disputes expeditiously, Foundry opposes Alcatel's request for an extension until January 11, 2007.

POTTER ANDERSON & CORROON LLP

Of Counsel:

William L. Anthony
Matthew H. Poppe
Michael F. Heafey
Orrick, Herrington & Sutcliffe LLP
1000 Marsh Road
Menlo Park, California 94025
(650) 614-7400

Garret G. Rasmussen
Antony P. Kim
Orrick, Herrington & Sutcliffe LLP
Washington Harbour
3050 K Street, N.W.
Washington, DC 20007-5135
(202) 339-8400

By: /s/ Philip A. Rovner

Philip A. Rovner (#3215)
Hercules Plaza
P.O. Box 951
Wilmington, Delaware 19899-0951
(302) 984-6000
provner@potteranderson.com

Attorneys for Plaintiff Foundry Networks, Inc.

Dated: December 12, 2006

766928

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

CERTIFICATE OF SERVICE

I, Philip A. Rovner, hereby certify that on December 12, 2006, the within document was filed with the Clerk of the Court using CM/ECF which will send notification of such filing(s) to the following; that the document was served on the following counsel as indicated; and that the document is available for viewing and downloading from CM/ECF.

BY HAND DELIVERY AND E-MAIL

Josy W. Ingersoll, Esq.
John W. Shaw, Esq.
Young Conaway Stargatt & Taylor, LLP
The Brandywine Building
1000 West Street, 17th Floor
Wilmington, DE 19899-0391
jingersoll@ycst.com
jshaw@ycst.com

I hereby certify that on December 12, 2006 I have sent by E-mail and First-Class Mail the foregoing document to the following non-registered participants:

Robert W. Kantner, Esq.
Mary L. Scott, Esq.
Baker Botts L.L.P.
2001 Ross Avenue
Dallas, TX 75201-2980
Robert.kantner@bakerbotts.com
Mary.scott@bakerbotts.com

G. Irvin Terrell, Esq.
Rufus W. Oliver, III, Esq.
Scott Partridge, Esq.
Baker Botts L.L.P.
One Shell Plaza
910 Louisiana Street
Houston, TX 77002-4995
Irv.terrell@bakerbotts.com
Rufus.oliver@bakerbotts.com
Scott.partridge@bakerbotts.com

/s/ Philip A. Rovner

Philip A. Rovner (#3215)
Potter Anderson & Corroon LLP
Hercules Plaza
P.O. Box 951
Wilmington, Delaware 19899
(302) 984-6000
E-mail: provner@potteranderson.com